

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

THE UNITED STATES OF AMERICA for the use)
of SPS NEW ENGLAND, INC.,)

Plaintiff,)

v.)

ENDURANCE AMERICAN INSURANCE)
COMPANY,)

Defendant.)

CIVIL ACTION NO:

JURY TRIAL DEMANDED

COMPLAINT

This is an action seeking to recover amounts owed on a federal construction project pursuant to the Miller Act, 40 U.S.C. §3131 *et seq.*

PARTIES

1. The plaintiff, SPS New England, Inc. (“SPS”), is a Massachusetts corporation with a principal business address of 98 Elm Street, Salisbury, Massachusetts.

2. The defendant, Endurance American Insurance Company (“Endurance”), is a company organized and existing under the laws of the State of Delaware with an office and principal place of business at 750 3rd Avenue, New York, New York. Upon information and belief, Endurance is a licensed foreign insurer pursuant to R.I. Gen Laws §27-2-1 *et seq.*

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331 because this is a civil action arising under the laws of the United States, namely, the Miller Act, 40 U.S.C. §§270b and 3131 *et seq.*

4. Venue is proper in this district pursuant to 40 U.S.C. §3133(b)(3)(B) because the District of Rhode Island is the district in which the bonded construction project was located.

FACTS

5. Hugo Key & Son Construction Holding Corp. (“HK&S”) was a contractor performing work in connection with the Solicitation, Offer and Award No. W912WJ-14-C-0020 for repairs to a jetty in Block Island, Rhode Island (the “Project”). The Owner of the Project is the United States Army Corps of Engineers, New England District.

6. Endurance issued Payment Bond EAIC141500258 with a penal sum of \$3,445,000 on September 16, 2014 naming HK&S as principal relating to Contract No. W912WJ-14-C-0020 to secure payment for the benefit of those supplying labor, equipment and materials to the Project (the “Payment Bond”).

7. On or about April 14, 2015, SPS and Hugo Key and Son, Inc. entered into a Bare Vessel Charter Agreement under which Hugo Key and Son, Inc. chartered a steel work skiff, the “Erica Lynn,” (the “Vessel”) from SPS for a flat fee of \$4,000 per month with no proration for partial months and reimbursement of any related costs. The Vessel was chartered for use at the Project.

8. On information and belief, Hugo Key and Son, Inc. and HK&S are one and the same.

9. SPS delivered the Vessel to HK&S on April 15, 2015.

10. HK&S returned the Vessel to SPS on July 1, 2015.

11. SPS issued the following invoices to HK&S which were never paid:

Invoice 1331 dated 4/18/15 in the amount of \$4,000 for charter fee 4/15/15 – 5/14/15

Invoice 1354 dated 5/15/15 in the amount of \$4,000 for charter fee 5/15/15 – 6/14/15

Invoice 1353 dated 5/15/15 in the amount of \$295.32 for Repair Order – Honda 200HP

Invoice 1375 dated 6/15/15 in the amount of \$4,000 for charter fee 6/15/15 – 7/14/15

12. On or about July 9, 2015, SPS sent a notice of claim under the Payment Bond to Endurance at the address listed in the Payment Bond and to HK&S at the address listed in the Bare Vessel Charter Agreement for the amount of its unpaid invoices, \$12,295.32. Both notices were returned to SPS as undeliverable. SPS re-sent the notices on July 20, 2015 to new addresses and both notices were delivered.

13. Endurance failed to acknowledge the claim or conduct any investigation until June 2, 2016.

14. SPS submitted an Affidavit of Claim in the amount of \$12,295.32 on June 10, 2016. To date, Endurance has failed to pay the claim.

COUNT I
(Payment Bond Claim – Miller Act)

15. SPS restates and incorporates paragraphs 1-14 above.

16. SPS supplied labor, equipment and/or materials to the Project pursuant to the Bare Vessel Charter Agreement.

17. HK&S failed and refused to pay SPS the amount of \$12,295.32 for labor, equipment and/or materials which SPS provided to the Project.

18. SPS provided a notice of claim to Endurance seeking payment of the amount of \$12,295.32 under the Payment Bond.

19. SPS complied with all condition precedent to payment under the Payment Bond and yet Endurance has failed to pay SPS for amounts due and owing from HK&S.

20. SPS is entitled to payment from Endurance under the Payment Bond.

21. All conditions precedent to the maintenance of this action have been performed.

22. Endurance has breached its obligations under the Payment Bond.

23. As a result, SPS has been damaged in excess of \$12,295.32 plus interest, attorneys' fees and costs.

COUNT II
(Breach of the Covenant of Good Faith and Fair Dealing)

24. SPS restates and incorporates paragraphs 1-23 above.

25. Endurance acted in bad faith in refusing to pay SPS the full amount of its claim justly and rightly owed to SPS under the Bare Vessel Charter Agreement.

26. Endurance has no justifiable basis for refusing and failing to pay SPS the amounts due and owing.

27. Endurance is improperly and in bad faith withholding the full amount of SPS's claim without having conducted any meaningful or timely investigation.

28. By its conduct, Endurance has breached the covenant of good faith and fair dealing implied by the Payment Bond.

29. SPS has suffered damage as a result of Endurance's breach of the implied covenant of good faith and fair dealing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, SPS New England, Inc., respectfully requests the following relief:

1. Judgment in its favor on each count of the Complaint;
2. An award of monetary damages in an amount not less than \$12,295.32 plus applicable pre-judgment and post judgment interest;
3. An award of attorneys' fees and costs; and
4. Such other and further relief as may pertain at law, in equity, or by statute.

JURY DEMAND

SPS New England, Inc. demands a trial by jury on all issues so triable.

PLAINTIFF,
SPS NEW ENGLAND, INC.
By its attorney,

Dated: June 27, 2016

_____/s/ Scott Griggs
Scott Griggs, #8506
LAWSON & WEITZEN, LLP
88 Black Falcon Avenue, Suite 345
Boston, Massachusetts 02210
sgriggs@lawson-weitzen.com
(617) 439-3987